

COMMISSION ON ADMINISTRATIVE JUSTICE

“Office of the Ombudsman”



Hata Mnyonge ana Haki

ANNUAL REPORT 2012: ABRIDGED VERSION

The Commission on Administrative Justice (Office of the Ombudsman) is delighted to present its First Annual Report covering the 12 month period between January and December 2012. The publication of the Report is done pursuant to Article 254 of the Constitution as read together with Section 53 of the Commission on Administrative Justice Act.

The Commission is established under Article 59(4) of the Constitution and the Commission of Administrative Justice (CAJ) Act, 2011. The mandate of the Commission is to enforce administrative justice in the public sector by addressing maladministration through effective complaints handling and alternative dispute resolution. In addition, the Commission has a constitutional mandate to safeguard public interest by promoting constitutionalism, securing the observance of democratic values and principles and protecting the sovereignty of the people of Kenya.

During the reporting period, the Commission made strides in executing its mandate in line with the Constitution and the CAJ Act as follows.

1. HANDLING OF COMPLAINTS AND INQUIRIES

The Commission handled a total of 4,062 complaints and inquiries which included 2,440 complaints inherited from the Public Complaints Standing Committee, 1,622 new complaints and inquiries, and 14 own motion complaints, and resolved 1,398 complaints. Of the 1,622 new complaints and inquiries handled during the reporting period, 94% were admissible while 6% were outside the Commission mandate.

a) Analysis of complaints lodged against public institutions

The majority of the new complaints and inquiries were against the Ministry of Lands at 11 percent, National Police Service at 10 percent, the Judiciary and Provincial Administration at 8 percent each, State Law Office at 5 percent, Ministry of Labour at 4 percent, and Ministry of Finance and the City Council of Nairobi at 3 percent each.

b) Categorization of new complaints handled by service issue

In terms of the categorization, most of the complaints and inquiries related to delay, unresponsive official conduct, unlawful official conduct, administrative injustice, inefficiency and abuse of power among others. The complaints and inquiries enabled the Commission to study the pattern of maladministration in the public sector and put redress intervention measures in place.

ISSUE	No.	PERCENTAGE
Delay	385	39
Administrative Injustice	166	17
Unfair treatment	146	15
Abuse of power	75	8
Unlawful Official Conduct	65	7
Inefficiency	40	4
Maladministration	29	3
Corruption	20	2
Incompetence	5	1
Ineptitude	2	0
Misbehaviour	2	0

c) Analysis of complaints received by action taken

The Commission handled 1,622 new complaints and processed them as shown in the Table below.

STATUS	NUMBER	PERCENTAGE
Ongoing	830	51
Resolved	617	38
Referred	127	8
Advised	48	3
Total	1,622	100

d) Resolution of complaints inherited from PCSC

The Commission inherited a total of 2,440 complaints from the Public Complaints Standing Committee (PCSC) out of which 606 were concluded.

e) Integrated Public Complaints Referral Mechanism

The Commission, jointly with other institutions that play an oversight role, established a mechanism for referral of complaints known as *Integrated Public Complaints Referral Mechanism (IPCRM)*. This was aimed at enhancing the accessibility and capacity of the Commission's complaints handling and also strengthen the partnership amongst the institutions. IPCRM is an electronic based system of referring complaints for resolution by the appropriate institution. Besides the Commission, the other institutions involved in the process include the Ethics and Anti-Corruption Commission, Kenya National Commission on Human Rights, National Cohesion and Integration Commission, Transparency International – Kenya and the National Anti-Corruption Campaign Steering Committee. The mechanism, currently in its pilot phase has facilitated efficient and effective access to the agencies' services at devolved levels with a total of 26 complaints being referred to the Commission for action through the system.

2. BUILDING AND STRENGTHENING COMPLAINTS HANDLING CAPACITY IN THE PUBLIC SECTOR

The Commission played an important role in public sector reforms through participation in performance contracting, training of public officers and provision of advisory services. Towards this end, the Commission monitored the implementation of the indicator 'Resolution of Public Complaints' through the assessment and certification of public institutions based on guidelines it developed. The guidelines encompassed a number of key requirements such as the establishment of internal complaints handling and management infrastructure, development and implementation of service delivery charters, submission of quarterly reports by public institutions and the contents of such reports, mode of reporting and the reporting format.

This culminated in the certification of 230 public institutions that submitted their quarterly reports to the Commission in addition to provision of advisory services on complaints handling. The Commission also trained 2,665 public officers drawn from local authorities, government ministries, state corporations and tertiary institutions in addition to training 213 representatives of civil society organizations under the aegis of the Kenya Alliance Residents Association. This is part of the public sector reforms geared towards improving efficiency and effectiveness in service delivery in the public sector.

3. PUBLIC AWARENESS AND ADVOCACY ON ADMINISTRATIVE JUSTICE

The Commission implemented a number of public awareness and advocacy programmes and activities aimed at promoting administrative justice in Kenya. Notably, the Commission undertook visits to ten (10) counties to, among other things, create awareness on its mandate, remind public officers of their obligations towards citizens' service delivery, conduct spot checks on selected public institutions and promote policies and administrative procedures on matters relating to administrative justice. The counties visited included Mombasa, Kilifi, Kisumu, Machakos, Uasin Gishu, Turkana, Nyeri, Kisii, Kakamega, Garissa and Nakuru. The participants of the forums included public officers, representatives of the private and civil society sectors as well as the public.

The visits accorded an opportunity to the public at the counties to access the services of the Commission within their environs, enabled the Commission to undertake spot checks on selected public institutions to determine the extent of service delivery to the public, and identify areas requiring its intervention. During the spot checks, the Commission made a number of observations including challenges in punctuality, adherence to service charters, courtesy and responsiveness. Based on the observations, the Commission developed intervention mechanisms to address the challenges.

a) Media Education and Advocacy

During the period under review, the Commission implemented a number of media education and advocacy strategies aimed

at creating awareness on administrative justice. These included media appearances, press statements and coverage and press conferences. The press statements and conferences dwelt on matters of strategic importance that had the likelihood of impacting negatively on governance and service delivery. In addition, the Commission published various advisory opinions in the print media to inform the Government and the public on the position of the law on a number of matters of importance in public administration in Kenya.

These activities focused on achieving enhanced accountability, improved performance and responsiveness within the public service, and increased visibility, accessibility and understanding of the Commission's mandate.

b) Nairobi International Trade Fair

The Commission participated in the Nairobi International Trade Fair (Nairobi Agricultural Society of Kenya Show) that took place from 1st to 7th October 2012. The Show provided an excellent platform to interact with and receive complaints from the public, disseminate Information, Education and Communication (IEC) materials, and give legal advice to the public on their complaints. It also provided an opportunity to profile and the Commission in the psyche of the public as well as receive complaints of alleged maladministration from the public. The visibility and knowledge of the Commission was enhanced as evidenced by an increment of the number of complaints received after the Trade Fair.

c) Spot Checks on Prisons

Section 51 of the Act mandates the Commission to correspond with persons in custody for purposes of undertaking its mandate. During the reporting period, the Commission activated this mandate and undertook the first spot check at the Machakos GK Prison. The check revealed, among other issues, that the Prison's land had been encroached upon by private developers. The Commission noted that there were private establishments within the precincts of the Prison compound and they were using the main Prison's gate to access their facilities. It was also noted that the residential houses were leased to Prison staff by the developers. The Commission has since written to the Ministry of Lands requesting for documentation that would demonstrate the gazetted acreage of the Prison's land. During the visit, the Commission interacted with prisoners and remandees and received their complaints on various issues including delay in hearing of appeals and unjustified long incarceration of remandees.

4. PROMOTION OF CONSTITUTIONALISM AND GOOD GOVERNANCE IN THE PUBLIC SECTOR

The Commission, like other Constitutional Commissions, is mandated under Article 249 of the Constitution to safeguard public interest by protecting the sovereignty of the people, securing the observance of democratic values and principles by State Organs and promoting constitutionalism. In addition, Article 59(2)(h)-(k) of the Constitution and Section 8 of the Act empower the Commission to promote constitutionalism and good governance by ensuring ethical leadership and integrity by public officers. This is complementary to the roles of other public institutions in leadership and integrity. Specifically, Article 59(2)(h) of the Constitution and Section 8(d) of the Act empower the Commission 'to investigate any conduct in state affairs or any act or omission in public administration in any sphere of Government that is alleged or suspected to be prejudicial or improper or to result in any impropriety or prejudice.' In addition, the Commission is empowered to investigate complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unresponsive official conduct and misbehaviour in public administration. Based on the foregoing, the Commission plays an important role in ensuring transparent governance, ethical leadership, good public administration and respect for human rights.

The Commission implemented a number of strategies to promote constitutionalism and good governance in Kenya which included the issuance of advisory opinions and recommendations, mediation and public interest litigation. Specifically, the Commission issued eight (8) advisories and recommendations on a number of matters of national importance such as the Draft Policy on National Values System and the Truth, Justice and Reconciliation Commission and wealth declaration forms. The recommendations in these advisories were later adopted in subsequent actions by relevant public institutions. In addition, the Commission participated in a number of court matters of public interest which included the Supreme Court Advisory Opinion Reference No. 2 of 2012 on the application of the Gender Principle and the jurisdiction of the Supreme Court in relation to presidential elections; Constitutional Petition No. 284 of 2012 on the constitutionality of sections 14, 16 and 23 of the Supreme Court Act, 2011; and Constitutional Petition No. 21 of 2012 on the applicability of the leadership and integrity provisions.

In addition, the Commission initiated measures to enforce compliance with leadership and integrity provisions in the Constitution. Notably, the Commission forwarded a list of 35 individuals to the Independent Electoral and Boundaries Commission recommending that they ought not to hold any public or elective offices based on their unsuitability; certified 109 judges and magistrates under the Vetting of Judges and Magistrates Act, 2011 and 60 applicants who sought judicial appointments as Judges of the High Court through the Judicial Service Commission; and certified 258 persons who sought appointive and elective offices. Furthermore, the Commission initiated a number of mediations to resolve disputes amicably in line with Article 252 of the Constitution and Section 8(f) of the Commission on Administrative Justice Act, 2011.

5. PARTNERSHIPS, COLLABORATIONS AND LINKAGES

The Commission initiated a number of local and international partnerships and coalitions aimed at enhancing its capacity and promoting good governance. This was achieved mainly through the Forum of Chairpersons of Constitutional Commissions and Holders of Independent Offices that crystallized into a Forum for addressing matters of national importance, promotion of constitutionalism and co-ordination of activities of these institutions.

In addition, the Commission participated in the National Council for the Administration of Justice that reviewed a number of Bills some of which were enacted into law, and participated in seminars and conferences that focused on administrative justice and good governance.

6. INSTITUTIONAL CAPACITY BUILDING AND GROWTH

The Commission developed its infrastructure and ensured efficient mobilization and prudent utilization of resources to create a robust and effective organization capable of discharging its mandate. Chief among these measures included the development of the organizational structure and recruitment of all cadres of staff, development of Regulations to fully operationalize the Commission in line with Sections 19(2) and 56 of the Act; development of the governance manuals and strategic framework; staff training and development; strengthening of physical and ICT infrastructure; and diversification of resource mobilization as well as prudent use of available resources. The recruitment process was transparent and competitive and brought the Commission's staff establishment to 53 representing 23 ethnicities and 29 Counties making the Commission to be one of the public institutions that complied with the Constitutional provisions on appointment of staff.

CHALLENGES

The main challenges included inadequate financial and human capital, limited presence at the counties, unresponsiveness by public institutions, low public knowledge of the Commission's mandate and inadequate mechanisms for enforcing the recommendations and decisions of the Commission.

FORGING AHEAD

The Commission has adopted a number of strategies to overcome the challenges and ensure full realization of its mandate. They include strengthening of financial and human capital, acquisition of requisite infrastructural tools and equipment, development and implementation of a Strategic Framework and Regulations, increasing accessibility at the counties, creating public awareness, support for public sector reforms and strengthening of partnerships and collaborations.

The full version of the report is available on www.ombudsman.go.ke